

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDI GARH

CAPP-27-2016 (O&M)
Date of decision: - 25.04.2017

Tata Capital Financial Services Ltd.

... Appellant

Versus

M/s G.S. Distributors Limited

... Respondent

CORAM: HON'BLE MR. JUSTICE S. J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPI NDER SINGH GREWAL

Present: - Mr. Salil Bali, Advocate,
and Mr. A.V.S. Barsat, Advocate,
for the appellant.

None for the respondent.

* * * *

S. J. VAZIFDAR, C. J. (ORAL)

This is an appeal against the order of the Learned Company Judge dated 03.10.2016 dismissing the appellant's application for modification of an order dated 23.08.2016.

2. The appellant had filed a petition for winding up the respondent-company, inter alia, on the ground that it was unable to pay its debts.

3. At the preliminary hearing on 23.08.2016, the Learned Company Judge passed the following order: -

"Present: Mr. Amrinder Vir Singh Barsat,
Advocate, for the petitioner.

Learned counsel for the petitioner submits that the respondent had availed loan from the petitioner and issued post dated cheques but the said cheques have been bounced and the legal notice issued by the petitioner has not been replied by the respondent-company.

Notice to the respondent-company for 5.12.2016 to show cause as to why the petition be not admitted.

Respondent-company is restrained from alienating its assets to the extent of the amount involved."

4. Within a week on 29.08.2016, the appellant filed an application for modification of the order which was dismissed by the impugned order passed by the Learned Company Judge. According to the appellant, through inadvertence, it mentioned that there was no reply to the statutory notice. The appellant pointed out that there was a reply and a replication thereto. The appellant, therefore, sought a modification of the order dated 23.08.2016.

The Learned Company Judge dismissed the application holding that this was a case of suppression of facts and imposed a cost of ₹ 25,000/- on the appellant.

5. Considering the facts and circumstances of the case, we are satisfied that this was a genuine and bonafide error on the part of the appellant. The appellant had nothing to gain by suppressing the fact that there was a reply to the statutory notice. It must be kept in mind that the order was passed at a preliminary hearing. It may have been a different matter had the order been passed when the petition was taken up for admission. An order of admission would undoubtedly have gravely affected the company sought to be wound up as well as the general body of creditors. The company has not come to any harm on account of the preliminary order. The appellant could not have benefitted by making a false statement for when the petition was taken up for admission the respondent-company would have pointed out the same itself. But before that stage, the appellant itself pointed out its error. If its intention

was to suppress the facts right upto the stage of admission, it would not have taken out the application itself within a week of the order at the preliminary hearing.

6. In these circumstances, the impugned order is set aside. The application for modification is allowed. For the same reason, the impugned order dated 03.10.2016 is also quashed and set aside. The appellant, however, does not seek to pursue the application for withdrawal. Hence, the application for withdrawal no longer survives. The order for costs in that application, however, is set aside.

7. In the result, the Company Court shall take up the petition for admission in due course.

8. The appeal is accordingly disposed of.

(S. J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

25.04.2017

Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No